

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS <b>FILED</b> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <b>MAR 27 2006</b> </div> CLERK, U.S. DISTRICT COURT By _____ Deputy
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MICHAEL TOLLIVER JORDAN,

Petitioner,

DOUGLAS DRETKE, Director  
Texas Department of Criminal Justice,  
Correctional Institutions Divisions,

Respondent.

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Civil Action No. 3:04-CV-857-L

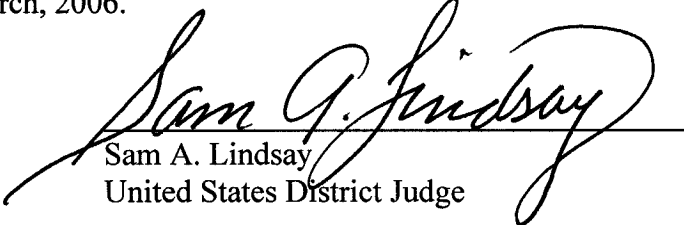
**ORDER**

This is a habeas case brought under 28 U.S.C. § 2254. Pursuant to 28 U.S.C. §636(b), and an order of the court in implementation thereof, this action was referred to the United States magistrate judge for proposed findings and recommendation. On March 1, 2006, the Findings, Conclusions and Recommendation of the United States Magistrate Judge were filed, to which no objections were filed.

The magistrate judge recommended that: (1) to the extent Petitioner was collaterally attacking his 1988 conviction in Dallas County, Petitioner was not currently “in custody” for that conviction, and therefore not able to mount a habeas challenge as to that conviction; and (2) to the extent Petitioner was claiming that his 1988 conviction was improperly used to enhance a 1989 conviction in Denton County, Petitioner previously mounted an unsuccessful challenge to his 1989 conviction in the Eastern District of Texas, and would therefore first need to seek leave to file a second or successive habeas petition in the United States Court of Appeals for the Fifth Circuit pursuant to 28

U.S.C. § 2244(b)(3)(A).<sup>\*</sup> Having reviewed the pleadings, file and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions are correct in recommending dismissal of the § 2254 petition. Accordingly, the court **accepts** the magistrate judge's findings, conclusion and recommendations insofar as dismissal is recommended. The court rejects the magistrate judge's recommendation, however, that the dismissal should be with prejudice and determines that the dismissal for lack of jurisdiction should be without prejudice. Accordingly, Petitioner's petition for the writ of habeas corpus is **denied**, and this action is **dismissed without prejudice**. Final judgment will issue by separate document.

It is so ordered this 27<sup>th</sup> day of March, 2006.

  
Sam A. Lindsay  
United States District Judge

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<sup>\*</sup>On January 24, 1988, Petitioner pled guilty to theft of property and was sentenced to four years confinement. *See State of Texas v. Jordan*, No. F-88-89376-NR (265<sup>th</sup> Jud. Dist. Ct., Dallas County, Tex., Jan. 24, 1988). In 1989, he was convicted of a separate offense in Denton County. *See State of Texas v. Jordan*, No. F-89-943-E (367<sup>th</sup> Jud. Dist. Ct., Denton County, Tex., May 31, 1990).